IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 600 /2004 Single Bench

APPELLANTS
DEFENDANTS

1] Sukhsagar Gorakh Son of Ayodhya Prasad, aged 48 years.

2] Prem Sagar Gorakh S/o Ayodhya Prasad, aged 45 years,.

Both resident of Dayalband Bilaspur [C.G.]

VERSUS

RESPONDENT
PLAINTIFF

Madhukar Joshi son of Prabhakar Joshi, Retired Railway employee, aged about 65 years, R/o Dayalband Bilaspur [C.G.]

APPEAL UNDER SECTION 100 OF THE CIVIL PROCEDURE

APPEAL VALUED AT RS. 720.00 AS IN COURT BELOW ON WHICH COURT FEE STAMP OF RS. 87.00 IS AFFIXED.

XI-HC-22

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(18)

# आदेश पत्रक

मामला क्रमांक S.A. 600/04 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| | **11.02.2005:-**<br><br>Shri Malay Kumar Bhadhuri, learned counsel for the appellants.<br><br>The instant second appeal has been preferred the appellants/defendants against the impugned judgment and decree passed by the learned IVth Civil Judge, Class-II Bilaspur by which the suit of the plaintiff/respondent for ejectment has been decreed on the ground of bonafide necessity and on the ground of non user under Sections 12(1) D and 12(1) F of Chhattisgarh Accommodation Control Act, 1961 (hereinafter referred to as "Act").<br><br>The case of the plaintiff was that the suit premises was given on rent at the rate Rs. 60/- per month since year 1976. The suit filed by the plaintiff wherein it was pleaded that the defendants were not using the premises since 1984 and has locked the same and the said premises was required for his unemployed son namely Mahesh aged 34 years who intends to open a typing institute and for the above purpose there is no suitable accommodation available within the corporation area of Bilaspur. The respondent/plaintiff also pleaded that vide notice dated 30.08.1999 by which the tenancy was terminated with effect from 30.08.1999 as the defendants were not paying the rent. Even after the receipt of the notice, the defendants did not pay rent and nor they delivered the vacant possession of the said property and therefore, the suit was filed.<br><br>In reply, the defendants disputed the contention of the plaintiff and stated that they are regularly paying the rent to the plaintiff and denied that the premises was locked since 1984. They also denied that the plaintiff | |

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needs the said premises for his son who wants to open a typing institute. The averment that the plaintiff does not have any alternative accommodation within the Bilaspur corporation area for the business of his son was also denied. They stated that after receiving the notice they replied on 12.10.1992 through their counsel and also sent a draft of Rs. 2160/- which was duly received by the plaintiff.

Learned Civil Judge by the impugned judgement and decree held that the plaintiff needs the suit premises bonafidely for the business of his son and he does not have any suitable alternative accommodation in Bilaspur town. It was further held that the defendant has stopped the use of the accommodation since 1984 and has locked the same to harass the plaintiff. However, the learned trial Court held that the plaintiff could not prove the default in payment of rent and therefore he was not entitled for the decree on the ground of Section 12(1) A of the Act and it was held that the tenancy was legally terminated so the plaintiff was entitled to recover the damages from the date of the judgment. The above finding was confirmed by the First Appellate Court by the impugned judgment and dismissed the appeal.

Learned counsel for the appellants has assailed the impugned judgment basically on the ground that finding of the trial Court is based on erroneous appreciation of evidence. Learned counsel for the appellants vehemently argued that the plaintiff is required to plead the alternative accommodation and non-suitability thereof for the purposes of ejectment on the ground of Section 12(1) F of the Act and after pleading this the plaintiff is required to prove the same. However, in the instant case there

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is no pleading, therefore the suit could not have been decreed on the ground of Section 12(1) F of the Act. He further contended that for a decree under Section 12(1) D of the Act, the Courts below have heavily relied upon the statements of P/2 and P/3 whose testimony is not trustworthy.

I have heard learned counsel for the appellants and gone through the pleadings of both the respective parties and submissions of the witnesses.

As far as the objection that plaintiff has not pleaded that he has not any suitable accommodation for the business of his son is concerned, in paragraph 6 of the plaint, the plaintiff has categorically pleaded that the suit premises is bonafidely required by him for the purpose of business of his son who wants to open a typing institute in the said premises and the plaintiff does not have any suitable alternative accommodation for business in Bilaspur town. Thus, the contention of the appellants that for the want of pleading the suit could not be decreed under Section 12(1) F of the Act merits can not be accepted and as far as the other ground for eviction under Section 12(1) D of the Act is concerned, PW 2 and PW 3 have categorically stated that the disputed house is locked from several years and in the cross examination this contention has not been rebutted by the suggestion on behalf of the appellants/defendants and therefore the statements of the above witnesses that the house was locked for years remain unrebutted by the appellants/defendants. The defendant has even admitted in his statement in the Court that he had obtained the suit premises on rent for a monthly rate of Rs. 60/- and they were conducting

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joint business. It is admitted that he had obtained the house on rent in the year 1976 and when he joined his services in the year 1981 and went to Katghora. Thereafter, his brother Premsagar started business in the suit premises and after his joining his services, the third brother Bhavsagar started business in the suit premises.

Both the Courts below after analyzing the evidence available on records arrived at the concurrent conclusion that the suit premises was bonafidely required for the plaintiff to start typing institute of his son and the defendants have failed to prove that plaintiff has alternative accommodation for the said business. The above finding is based on sound appreciation of evidence and does not call for any interference and the contention of the defendants that the son of the plaintiff can continue his business in the house itself has no merits as the landlord can not be compelled by the tenant as to how he should conduct his business. It is the discretion of the landlord only. The counsel for the appellants relied upon the decision of High Court of Madhya Pradesh rendered in the case of **Tikamchand Vs. Prakash Chandra** reported in **1991 J.L.J. 642,** and submitted that it was incumbent upon the plaintiff to plead that there is no suitable alternative accommodation for starting the business of his son and even then decree under Section 12(1) f was passed. However, the same is of no help to the appellants as the plaintiff has pleaded in paragraph 6 of his plaint that he has no suitable alternative accommodation for the purposes of shop of his son. Furthermore, the plaintiff has also established his case for ejectment by proving the ground under Section 12(1) D of the Act as the tenant is not using the premises

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since 1984 and this fact has been proved by the plaintiff by oral evidence and there is no cross examination on behalf of the defendants on this point.

Looking to the concurrent findings of both the Courts below, I am of the opinion that the plaintiff is the best judge to carry on his own business. In this regard reliance is placed upon ***AIR1999 Supreme Court 2450, Prem Narayan Barchhiha Vs. Hakimuddin Saifi*** wherein it has been held that for the purposes of eviction for non-residential accommodation, the landlord is not required to prove non-suitability of residential accommodation for non-residential purposes. Thus, on the aforesaid analyses, I am of the opinion that in the judgment and decree of both the Courts below, there is no infirmity and there is no substantial question of law involved for adjudication of the second appeal and thus the appeal deserves to be dismissed at the admission stage and it is accordingly dismissed.

Looking to the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
DHIRENDRA MISHRA
Judge

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